

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. MARC B. WEISBERG,

Defendant.

INDICTMENT

18 U.S.C. §§ 1343 and 1346

18 U.S.C. §§ 1957 and 2

18 U.S.C. §§ 1956(a)(1)(B)(i) and 2

18 U.S.C. §§ 982, 981, 28 U.S.C. § 2461(c),
and 21 U.S.C. 853 (p)

COUNTS 1 - 8

The Grand Jury charges that:

INTRODUCTION AND BACKGROUND

At all times relevant to Counts 1 through 8 of this Indictment:

1. Qwest Communications International, Inc. and its subsidiaries (collectively, "Qwest") was a telecommunications company providing services to customers throughout the United States. Qwest was a publicly held corporation, whose stock was available to the investing public through the New York Stock

Exchange.

2. Defendant MARC B. WEISBERG was a corporate officer and employee of Qwest. While employed at Qwest, Defendant MARC B. WEISBERG held the titles of Senior Vice President and Executive Vice President.

3. Defendant MARC B. WEISBERG's duties at Qwest included managing and directing Qwest's corporate development group. Defendant MARC B. WEISBERG was responsible for, among other things, evaluating, securing, and managing corporate investments for the benefit of Qwest and its shareholders.

A. Qwest Corporate Investments

4. Pursuant to Qwest company policy and at the direction of Defendant MARC B. WEISBERG, Qwest invested in private technology companies before or at the time they became publicly traded companies. Many of these investments were made through Qwest's subsidiary U.S. Telesource, Inc.

5. One type of investment opportunity made available to Qwest by various companies included the right to purchase stock through a directed share program ("DSP") at the time of the companies' initial public offering ("IPO"). A DSP allowed a company about to go public to make available a limited number of shares of stock to investors of their choosing, before the IPO, at a fixed opening price established by underwriters.

6. During 1999 to 2001, DSP stock in technology companies was generally in high demand, and presented a lucrative investment opportunity because share prices often rose significantly upon trading on a public exchange. During this time period, Qwest made profitable investments in several DSPs offered by technology companies, including Akamai Technologies, Inc. and Redback Networks Inc. ("Redback").

7. Defendant MARC B. WEISBERG also coordinated Qwest's pre-IPO private placement investments in various technology companies, which included obtaining preferred shares, options, and/or warrants in such companies.

8. Prior to entering into a commercial transaction or relationship with a technology company, Qwest often also negotiated for equity in that technology company. Defendant MARC B. WEISBERG was responsible for negotiating and approving the equity component of Qwest's commercial transactions and executing documents connected with the transaction. Because the acquisition of equity was often an essential or important component of a commercial transaction, Defendant MARC B. WEISBERG, on behalf of Qwest, had the authority and ability to either reject or approve large commercial transactions.

B. Personal Investment Opportunities

9. In order to retain key personnel in a competitive job market, in some circumstances Qwest permitted employees to invest in companies with whom Qwest was or contemplated doing business ("Qwest vendors"). All such investments, however, were subject to and restricted by the company's conflict of interest policy, which, among other things, required employees and officers to disclose all potential conflicts of interest and prohibited employees and officers from attempting to exploit or exploiting for personal benefit Qwest business opportunities.

10. Personal investments in Qwest vendors were also restricted by the duties of loyalty and good faith owed by Qwest officers to Qwest and its shareholders. These duties required corporate officers, including Defendant MARC B. WEISBERG, among other things, to act honestly and faithfully in all their dealings with Qwest, to act in the best interests of Qwest, and to make full and fair disclosure to Qwest of any personal interests or profit they expected to derive or had derived from any transaction in which they participated in the course of their employment.

11. When a Qwest vendor made personal investment opportunities available, Qwest intended to and did allocate those opportunities in an equitable fashion among certain members of the Qwest executive team, consistent with the company's goal of employee retention.

THE SCHEME

12. Beginning on or about March 1, 1999, and continuing through on or about September 14, 2001, in the State and District of Colorado and elsewhere, defendant MARC B. WEISBERG knowingly devised and intended to devise a scheme: (a) to defraud Qwest and Qwest shareholders, including a scheme to deprive Qwest and its shareholders of their intangible right to Defendant MARC B. WEISBERG'S honest services; and (b) for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises.

13. As part of the scheme, Defendant MARC B. WEISBERG secretly used his position, power, and influence as a Qwest corporate officer to personally profit, and attempt to personally profit, by seeking and obtaining valuable investment opportunities for himself and others at the expense and to the detriment of Qwest and its shareholders and in a manner not authorized by or in the best interests of Qwest and its shareholders, in violation of his duties as a Qwest officer and employee. Defendant MARC B. WEISBERG accomplished this scheme by: (a) secretly taking Qwest's corporate investment opportunities for personal gain; (b) improperly depriving Qwest of its right to allocate DSP shares and concealing the extent of his personal investments; and (c) improperly conditioning Qwest business on the receipt of personal investment

opportunities and using unauthorized tactics to obtain personal investment opportunities.

A. Secretly Taking Qwest's Corporate Investment Opportunities for Personal Gain

14. As part of the scheme, Defendant MARC B. WEISBERG engaged in the following conduct:

(a) On or about September 22, 1999, Alteon Web Systems ("Alteon") offered Qwest an opportunity to purchase 10,000 shares of its highly sought-after stock through Alteon's DSP. Defendant MARC B. WEISBERG secretly took this opportunity for the benefit of himself and others and to the economic detriment and without the authorization of Qwest.

(b) In or around May 2000, ONI Systems Corp. ("ONI") offered Qwest an opportunity to purchase 100,000 shares of its highly sought-after stock through ONI's DSP. Defendant MARC B. WEISBERG secretly took this opportunity for the benefit of himself and others and to the economic detriment and without the authorization of Qwest.

15. Defendant MARC B. WEISBERG made material omissions and materially false representations, and used false pretenses, in furtherance of the aforementioned conduct, including but not limited to the following:

(a) Defendant MARC B. WEISBERG failed to disclose and made misleading statements to Qwest, Qwest executives, and members

of Qwest's Board of Directors concerning the nature and existence of corporate investment opportunities made available to Qwest by Alteon and ONI.

(b) Defendant MARC B. WEISBERG failed to disclose and made misleading statements to Qwest, Qwest executives, and members of Qwest's Board of Directors concerning the manner by which he obtained personal investment opportunities in Alteon and ONI.

(c) Defendant MARC B. WEISBERG made misleading statements to ONI and Alteon concerning and in connection with his acceptance of personal investment opportunities.

(d) Defendant MARC B. WEISBERG attempted to destroy and did cause the destruction of personal and corporate records reflecting his conduct.

16. Defendant MARC B. WEISBERG profited in excess of \$720,000 as a result of his personal investments obtained fraudulently through the conduct set forth above in paragraphs 14 and 15 of this Indictment.

B. Improperly Depriving Qwest of its Right to Allocate DSP Shares and Concealing the Extent of Weisberg's Personal Investments

17. As part of the scheme, Defendant MARC B. WEISBERG engaged in the following conduct:

(a) On or about April 6, 1999, Defendant MARC B. WEISBERG caused Rhythms NetConnections Inc. ("Rhythms"), a Qwest vendor, to

allocate DSP stock to his parents, father-in-law, children, and secretary without the knowledge or authorization of Qwest, thereby depriving Qwest of its right to allocate at least 3,300 Rhythms DSP shares in the best interest of the corporation and its shareholders.

(b) On or about May 15, 2001, Defendant MARC B. WEISBERG caused Tellium, a Qwest vendor, to allocate 10,000 shares of DSP stock to himself by use of a nominee entity "Mandalay Retreat LLC" without the knowledge or authorization of Qwest, thereby depriving Qwest of its right to allocate at least 10,000 Tellium DSP shares in the best interest of the corporation and its shareholders.

(c) On or about May 15, 2001, Defendant MARC B. WEISBERG secretly caused Tellium, a Qwest vendor, to allocate DSP stock to his wife's personal trainer, brother-in-law, and secretary without the knowledge or authorization of Qwest, thereby depriving Qwest of its right to allocate at least 3,000 Tellium shares in the best interest of the corporation and its shareholders.

18. Defendant MARC B. WEISBERG made material omissions and materially false representations, and used false pretenses, in furtherance of the aforementioned conduct, including but not limited to the following:

(a) Defendant MARC B. WEISBERG failed to disclose and made false representations to Qwest, Qwest executives, and members of Qwest's Board of Directors concerning the extent of his interest in

Tellium and his allocation of Tellium and Rhythms investment opportunities to unauthorized individuals.

(b) Defendant MARC B. WEISBERG made false and misleading statements, and made material omissions to Tellium and Rhythms concerning and in connection with his acceptance of personal investment opportunities.

(c) Defendant MARC B. WEISBERG attempted to destroy and did cause the destruction of personal and corporate records reflecting his unlawful conduct.

19. Defendant MARC B. WEISBERG and his family, friends, and others profited in excess of \$186,000 as a result of the concealed personal investments obtained fraudulently through the conduct set forth above in paragraphs 17 and 18 of this Indictment.

C. Improperly Conditioning Qwest Business on the Receipt of Personal Investment Opportunities and Using Unauthorized Tactics to Obtain Investment Opportunities

20. As part of the scheme, Defendant MARC B. WEISBERG engaged in the following conduct:

(a) On or about March 1, 1999, and continuing through on or about April 4, 1999, while negotiating and directing the negotiations of a multi-million dollar commercial transaction with Rhythms on behalf of Qwest, Defendant MARC B. WEISBERG secretly used his position, power, and influence as a Qwest executive to obtain personal investment opportunities in Rhythms in a manner not

authorized by or in the best interests of Qwest, including making receipt of personal investment opportunities in Rhythms a condition of said transaction.

(b) In or around April of 1999, and continuing through on or about May 17, 1999, while negotiating and participating in a multi-million dollar commercial transaction with Redback on behalf of Qwest, Defendant MARC B. WEISBERG secretly used his position, power, and influence as a Qwest executive to obtain personal investment opportunities in Redback in a manner not authorized by or in the best interests of Qwest.

(c) On or about August 13, 1999, and continuing through on or about January 11, 2000, while negotiating and directing the negotiations of a multi-million dollar commercial transaction with Tellme Networks, Inc. ("Tellme") on behalf of Qwest, Defendant MARC B. WEISBERG secretly used his position, power, and influence as a Qwest executive in an attempt to obtain personal investment opportunities in Tellme in a manner not authorized or in the best interests of Qwest, including making receipt of personal investment opportunities in Tellme a condition of said transaction.

(d) In or around October 1999, and continuing through on or about November 23, 1999, while participating in a commercial relationship with CacheFlow, Inc. ("CacheFlow") on behalf of Qwest, Defendant MARC B. WEISBERG secretly used his position, power, and

influence as a Qwest executive to obtain personal investment opportunities in CacheFlow in a manner not authorized by or in the best interests of Qwest.

(e) On or about October 14, 1999, and continuing through September 20, 2000, while negotiating and participating in a multi-million dollar commercial transaction with CoSine Communications, Inc. ("CoSine") on behalf of Qwest, Defendant MARC B. WEISBERG secretly used his position, power, and influence as a Qwest executive to obtain personal investment opportunities in CoSine in a manner not authorized by or in the best interests of Qwest.

(f) On or about May 29, 2001, and continuing through on or about July 17, 2001, while negotiating and participating in a commercial transaction with Mahi Networks ("Mahi") on behalf of Qwest, Defendant MARC B. WEISBERG secretly used his position, power, and influence as a Qwest executive to obtain stock options for himself in Mahi, in a manner not authorized by or in the best interests of Qwest.

21. Defendant MARC B. WEISBERG made material omissions and materially false representations, and used false pretenses, in furtherance of the aforementioned conduct, including but not limited to the following:

(a) Defendant MARC B. WEISBERG failed to disclose and made misleading statements to Qwest, Qwest executives, and members of

Qwest's Board of Directors concerning the manner by which he obtained personal investment opportunities in Qwest vendors.

(b) Defendant MARC B. WEISBERG failed to disclose and made false statements to Qwest concerning his financial interest, and attempts to obtain a financial interest, in certain Qwest vendors.

(c) Defendant MARC B. WEISBERG intimidated and threatened to fire a Qwest employee who attempted to disclose Defendant MARC B. WEISBERG's conduct as it related to at least one Qwest vendor.

(d) Defendant MARC B. WEISBERG caused the creation of false and misleading documents to conceal his financial interest in certain Qwest vendors.

(e) Defendant MARC B. WEISBERG influenced and participated in the commercial relationship between Qwest and Qwest vendors set forth in paragraph 20, above, in which he was personally invested, in a manner prohibited by Qwest.

(f) Defendant MARC B. WEISBERG made false and misleading statements concerning the purpose and nature of business expenses charged to Qwest and reimbursed to Defendant MARC B. WEISBERG.

(g) Defendant MARC B. WEISBERG attempted to destroy and did cause the destruction of personal and corporate records reflecting his conduct.

22. Defendant MARC B. WEISBERG had a net profit in excess of \$2,000,000 as a result of personal investments obtained fraudulently

through the conduct set forth above in paragraphs 20 and 21 of this Indictment.

23. On or about June 13, 2003, in an attempt to cover up and conceal the scheme, Defendant MARC B. WEISBERG made false representations to Qwest and its counsel concerning his financial interests in certain Qwest vendors.

USE OF THE WIRES

24. On or about the following dates, in the State and District of Colorado and elsewhere, Defendant MARC B. WEISBERG, for the purpose of executing the scheme described above, knowingly transmitted and caused to be transmitted in interstate commerce by means of wire communication certain writings, signs, signals, pictures, and sounds, as set forth below:

<u>COUNT</u>	<u>Date</u>	<u>Nature of Wire Communication</u>
1	March 14, 2000	Telephone call from Colorado to California connected with an investment in Cosine
2	March 20, 2000	Fax from Colorado to Massachusetts connected with transferring funds for an investment in Cosine
3	May 19, 2000	Telephone call from Texas to Colorado connected with an investment in ONI
4	May 20, 2000	Telephone call between Colorado and Texas connected with an investment in ONI
5	June 1, 2000	Fax from Colorado to California connected with transferring funds for an investment in ONI

<u>COUNT</u>	<u>Date</u>	<u>Nature of Wire Communication</u>
6____	April 27, 2001	E-mail from Colorado to New Jersey to obtain allocations of stock in Tellium's DSP
7	May 15, 2001	Fax from Colorado to California providing Thomas Weisel Partners with Defendant MARC B. WEISBERG'S trading authorization connected to the purchase of Tellium DSP stock
8	May 16, 2001	Fax from Colorado to California directing Thomas Weisel Partners to open an account for David Fujii in connection with the purchase of Tellium DSP stock

Each of the foregoing counts was in violation of Title 18, United States Code, Sections 1343 and 1346.

COUNT 9

The Grand Jury charges that:

25. On or about June 14, 2000, in the State and District of Colorado and elsewhere, Defendant MARC B. WEISBERG knowingly engaged in and willfully caused a monetary transaction in criminally derived property which was of a value greater than \$10,000.00, which involved the use of a financial institution which was engaged in, and activities of which affected, interstate commerce in any way and degree, that is, the wire transfer of funds in the amount of \$350,000 from Defendant MARC B. WEISBERG's Summit Capital Group account at Smith Barney Citigroup to his Bear Sterns account, in part to arrange for the purchase of a Mercedes Benz vehicle, such property having been derived from specified unlawful activity of wire fraud in

violation of Title 18, United States Code, Section 1343, as set forth in this Indictment.

The foregoing count was in violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 10

The Grand Jury charges that:

26. On or about May 25, 2001, in the State and District of Colorado and elsewhere, Defendant MARC B. WEISBERG knowing that property involved in a financial transaction represented the proceeds of unlawful activity, conducted a financial transaction and willfully caused a financial transaction involving the use of a financial institution which was engaged in, and activities of which affected interstate commerce in any way and degree, which in fact involved the proceeds of a specified unlawful activity, that is, the wire transfer of funds in the amount of \$155,285 from Defendant MARC B. WEISBERG's Mandalay Retreat account at Thomas Weisel Partners to the account of Residential Systems, Inc. at U.S. Bank for miscellaneous electrical services and products provided at Defendant MARC B. WEISBERG's residence in Grand Cayman Island, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity of wire fraud in violation of Title 18, United States Code, Section 1343, as set forth in this

Indictment.

The foregoing count was in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

COUNT 11

The Grand Jury charges that:

27. On or about June 7, 2001, in the State and District of Colorado and elsewhere, Defendant MARC B. WEISBERG knowing that property involved in a financial transaction represented the proceeds of unlawful activity, conducted a financial transaction and willfully caused a financial transaction involving the use of a financial institution which was engaged in, and activities of which affected interstate commerce in any way and degree, which in fact involved the proceeds of a specified unlawful activity, that is, the wire transfer of funds in the amount of \$61,068 from Defendant MARC B. WEISBERG's Mandalay Retreat account at Thomas Weisel Partners to his Mandalay Retreat account at Bear Stearns, in part for miscellaneous interior design and electrical services and product provided for Defendant MARC B. WEISBERG's residence in Grand Cayman Island, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity of wire fraud in violation of Title 18, United States Code, Section 1343, as set forth in this Indictment.

The foregoing count was in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

COUNT 12
(CRIMINAL FORFEITURE ALLEGATION)

_____The Grand Jury charges that:

Upon conviction of one or more of the offenses alleged in Counts 1-11 of this Indictment, Defendant MARC B. WEISBERG shall forfeit to the United States, pursuant to 18 U.S.C. § 982, 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 1956(c)(7), 18 U.S.C. § 1961(1), and 28 U.S.C. § 2461(c), any property involved in, and any property constituting or derived from proceeds obtained directly or indirectly as a result of said violations, including but not limited to the following:

1. Money Judgment

A sum of money equal to \$2,906,000 in United States currency, representing the amount of funds constituting proceeds obtained directly or indirectly as a result of the offenses of wire fraud in violation of 18 U.S.C. §§ 1343 and 1346, and funds involved in the offenses of money laundering in violation of 18 U.S.C. §§ 1956, 1957 and 2.

2. Real Property

The real property known as Mandalay Villa #5 (1947 West Bay Road 5), Grand Cayman, Cayman Islands.

3. Substitute Assets

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C.

§ 982(b), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above, including but not limited to the following:

(i) The real property known as 100 South University Blvd., #8, Denver, Colorado 80209; and

(ii) The real property known as Mandalay Villa #5 (1947 West Bay Road 5) Grand Cayman, Cayman Islands.

A TRUE BILL:

FOREPERSON

WILLIAM J. LEONE
Acting United States Attorney

By: Tim R. Neff
Assistant U.S. Attorney

By: Peter H. Walsh
Assistant U.S. Attorney

DATE: February 16, 2005

DEFENDANT: MARC B. WEISBERG

DOB: July 7, 1957

ADDRESS: 6 Cherry Hills Farm Court
Englewood, Colorado

OFFENSE: Counts 1 - 8

Wire Fraud

18 U.S.C. §§ 1343 & 1346

Counts 9-11

Money Laundering

18 U.S.C. §§ 1957 & 2 (Count 9)

18 U.S.C. §§ 1956(a)(1)(B)(i) & 2 (Counts 10 & 11)

Count 12

Forfeiture Allegation

18 U.S.C. §§ 982, 981, 28 U.S.C. § 2461(c),
& 21 U.S.C. 853 (p)

PENALTY: Counts 1 - 8 (Wire Fraud)

NMT 5 years; NMT \$250,000 fine, or both;

NMT 3 years Supervised Release; Restitution;

\$100.00 Special Assessment (each count)

Count 9 (Money Laundering)

NMT 10 years imprisonment; NMT \$ 250,000 fine, or
both; Restitution; \$100.00 Special Assessment Fee

Counts 10 - 11

NMT 20 years imprisonment; NMT \$ 250,000 fine, or
both; Restitution; \$100.00 Special Assessment Fee
(each count)

Count 12

Forfeiture as alleged in Count 12

AGENTS: FBI Special Agents Peter Hunkar & Dorothy
Wehrly

AUTHORIZED

BY: Tim Neff & Peter H. Walsh, Assistant U.S. Attorneys

ESTIMATED TIME OF TRIAL:
_____ five days or less

X over five days
 other

THE GOVERNMENT

 will seek detention in this case
 X will not seek detention in this case

The statutory presumption of detention **is not** applicable to this defendant.